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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/564,761

01/17/2006

Tatsushi Ogawa

040894-7374

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9629 7590 12/24/2008
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EXAMINER

LOW, LINDSAY M

ART UNIT

PAPER NUMBER

3721

MAIL DATE

DELIVERY MODE

12/24/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/564,761	Applicant(s) OGAWA ET AL.	
	Examiner LINDSAY M. LOW	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Upon further consideration, the finality of the previous office action mailed June 11th, 2008 is hereby withdrawn.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

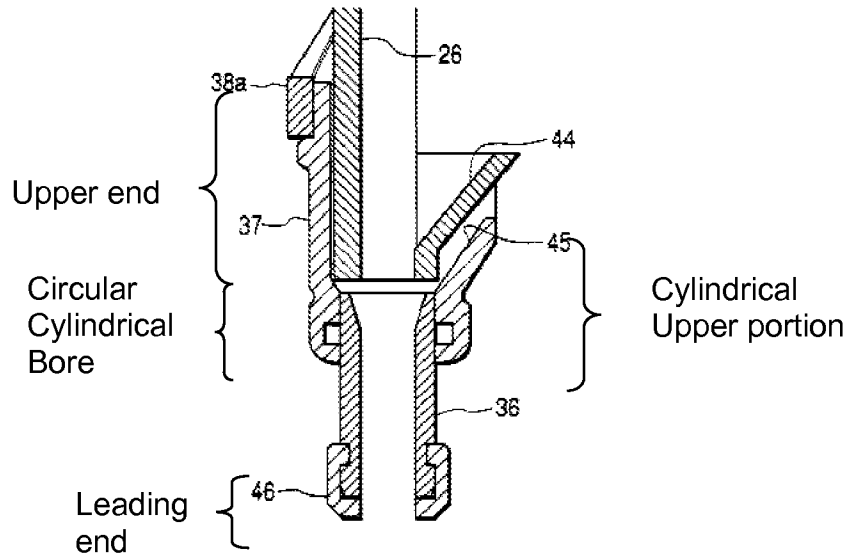
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 and 3-20 are rejected under 35 U.S.C. 102(b) as being anticipated by JP-A-2002-337066, which corresponds to US Patent number 6,578,750.

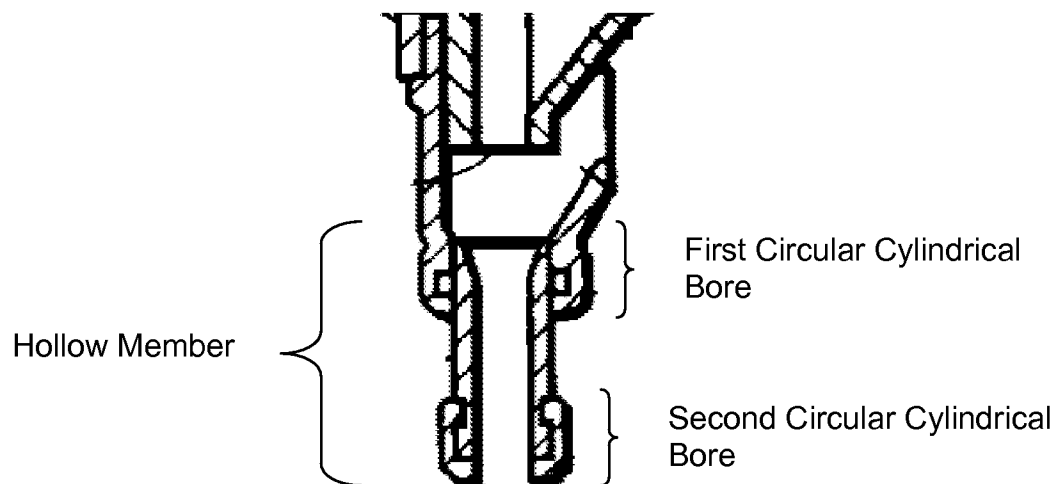
Claims 1 and 3-16 are rejected for the same reasons set forth in paragraph 3 of the previous office action mailed October 29th, 2007.

Regarding the amendments to claim 1, refer to the figure below for the designations of the upper end, leading end, cylindrical portion, and the circular cylindrical bore.

FIG. 6



Regarding new claims 17-20, refer to the figure below for the designations of the hollow member with its proximal and distal ends, the first circular cylindrical bore, and the second circular cylindrical bore.



Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1 and 3-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP-A-2002-337066, which corresponds to US Patent number 6,578,750, in view of Kristiansen (1,241,996).

Claims 1 and 3-16 are rejected for the same reasons set forth in paragraph 11 of the previous office action mailed March 26th, 2007.

Regarding the amendments to claim 1 and new claims 17-20, refer to the rejection in paragraph 3 above.

Response to Arguments

6. Applicant's arguments filed September 9th, 2008 have been fully considered but they are not persuasive.

Applicant contends that the "upper end" designated by the examiner is an unduly broad interpretation. However it should be noted that the claims do not restrict the end of the contact nose to be a specific length or surface. The claims only recite "an upper end" and "a leading end." The "upper end" designated by the examiner is deemed to be an upper end, as it is the uppermost section of the contact nose.

Applicant contends that portions 45, 37, and 36 do not define a circular cylindrical bore. However, it should be noted that the "cylindrical upper portion" designated by the examiner is certainly circular, as it defines a round closed loop portion. Note that an object can still be "circular" even if it does not form an absolute perfect circle. In addition, the "cylindrical upper portion" is certainly a "cylindrical" shape, as it has a length in a circular body.

Applicant contends that the Examiner fails to articulate how Kubo (AAPA) discloses the recited "nail supply mechanism." However, examiner asserts that claims are given their broadest reasonable interpretation consistent with the specification. In this instance, the claims merely state that the "nail supply mechanism being *configured and dimensioned* to accommodate only nails having a length less than or equal to....the leading end of the contact nose to a farthest extent of the radial enclosure (emphasis added)." Kubo's (and Kristiansen's) nail supply mechanism is certainly capable of being "configured and dimensioned" such that it only accommodates nails having a length less than or equal to the distance between the leading end of the contact nose and the farthest extent of the radial enclosure, just as claim 8 recites in the present invention.

For the reasons above, the grounds of rejection are deemed proper.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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8. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LINDSAY M. LOW whose telephone number is (571)272-1196. The examiner can normally be reached on Monday thru Friday 7:30 to 5:00.

10. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. M. L./
Examiner, Art Unit 3721

/Rinaldi I Rada/
Supervisory Patent Examiner, Art Unit 3721
12/17/2008